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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-128
Implementation of the	)	
Pay Telephone Reclassification	)	
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

REPLY OF PEOPLES TELEPHONE COMPANY, INC. TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, Peoples Telephone Company, Inc. ("Peoples") respectfully submits this reply to the oppositions filed to Peoples' Petition for Reconsideration of the Commission's Second Report and Order ("*Second R&O*") in the above-captioned proceeding.[1]

I. INTRODUCTION

For years, interexchange carriers ("IXCs") have profited from access code and subscriber 800 ("dial-around") calls originating from payphones without having to provide adequate compensation to payphone service providers ("PSP") for their service. It appears that old habits die hard. As is evident from the oppositions filed by the IXCs to Peoples' petition for

[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) ("*Order*"); Order on Reconsideration, 11 FCC Rcd 21233 (1996) ("*Reconsideration Order*", together "*Payphone Orders*"), remanded sub. nom., *Illinois Public Telecommunications Association v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) ("*IPTA*"); Second Report and Order, FCC 97-371 (rel. October 9, 1997)..

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reconsideration, the IXCs continue to want to receive the benefit of payphone service without having to provide PSPs with full and fair compensation for the service rendered.

In Peoples' petition, it asked to Commission to correct two errors that the Commission made in calculating the dial-around default compensation rate. First, Peoples showed that the capital costs of the coin mechanism should be treated as a joint and common costs attributable to both coin and coinless calls. Second, Peoples showed that the default rate should reflect bad debt expenses that were attributable solely to coinless calls. With these two adjustments, the default rate would be set at $.328 per call, rather than the $.284 per call rate that the Commission established.

Despite recognition by one IXC that coin calls are the driving force behind the placement of payphones[2] (a service that clearly benefits IXCs), the IXCs do not want the costs of the coin mechanism considered in calculating the default rate because the coin mechanism is not used to make coinless calls. On the other hand, although Peoples and other PSPs have demonstrated that they incur costs as a result of bad debts/uncollectables that are attributable solely to the "dial-around" service, the IXCs do not want those costs used in calculating the default rate either. This double standard advanced by the IXCs demonstrates that their oppositions to Peoples' petition are without merit and should be given little consideration by the Commission.

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[2] *See* Opposition of Sprint to Petitions for Reconsideration ("Sprint Opposition") at 5.

II. The Coin Mechanism in Payphones Benefits IXCs by Increasing the Volume of Dial-Around Minutes

As the record demonstrates, almost every payphone in service in the United States is a unified coin/coinless payphone, as opposed to coinless only-payphones. This is no accident. The fact is that the placement of payphones in service is driven by the PSPs' ability to generate sufficient overall revenue from both coin and coinless calls. Without the coin mechanism, "most payphones would not exist" at all.[3] Indeed, Sprint concedes that coin calls are "the driver in [PSPs] decision to place a payphone" into service.[4] Thus, without coin mechanism, the payphone would not be placed, dial-around calls would not be made, and IXCs would not earn revenue from such calls.

The IXCs do not contend that they do not benefit financially from dial-around calls made from payphones. Nevertheless, they contend that they should not be required to compensate PSPs for the costs of the coin mechanism because a dial-around caller does not use the coin mechanism in making a call.[5] This limited view completely ignores the fact that the caller making the dial-around call would not have a payphone on which to place the call were it not for the coin mechanism. Because of the coin mechanism, however, callers have access to payphones to make dial-around calls, and IXCs are able to earn profits from those calls. The

3 Comments of Communications Central, Inc. ("CCI Comments") at 3.

4 Sprint Opposition at 5.

5 *See* AT&T's Opposition to and Comments on Petitions for Reconsideration of the Second Report and Order ("AT&T Opposition") at 12; Comments of MCI Telecommunications Corporation ("MCI Opposition") at 3.

only question here is whether those IXCs should be required to fully compensate PSPs for those calls.[6]

In its opposition, Sprint agrees that coin calls drive the placement of payphones, but contends that IXCs that receive dial-around calls should not have to compensate PSPs for the costs of the coin mechanism within those payphones.[7] In Sprint's opinion, the compensation that PSPs receive for dial-around calls constitutes a "windfall resulting from government largess" because PSPs would place payphones in service based on the coin traffic alone.[8] Accordingly, Sprint believes that it should be required to pay only the "marginal costs" of providing dial-around calls. This view directly contradicts Congress' mandate that PSPs be "fairly compensated for each and every [call] using their payphones."[9] Under Sprint's view, the only costs for which the IXCs would have to provide compensation would be those costs directly attributable to a particular caller placing a dial-around call. This view ignores the underlying costs associated with, and the holistic nature of, placement of payphones and provision of payphone service. Given that Sprint concedes that the coin mechanism is an integral part of a PSPs decision to place a payphone in service, it follows that the Commission should include that cost in

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6 In addition, even if it were true that PSPs could recover the costs of the coin mechanism from coin callers, *see* AT&T Opposition at 12, MCI Opposition at 4, coin callers should not be required to subsidize large IXCs who also derive an economic benefit from the placement of a payphone in which the coin mechanism is an integral part.

7 Sprint Opposition at 5.

8 *Id.*

9 47 U.S.C. § 276(b)(1)(A).

determining the default rate for dial-around calls, which are made possible only by the presence of a "complete" payphone instrument.

III. BAD DEBT EXPENSES ATTRIBUTABLE TO DIAL-AROUND CALLS HAVE BEEN SUFFICIENTLY PROVEN

In its petition for reconsideration, Peoples explained that it had incurred bad debt expenses that were attributable solely to uncompensated dial-around calls. For the nine months ended September 30, 1997, Peoples recorded $652,000 in bad debt expenses directly attributable to the inability, despite reasonable efforts by Peoples, to collect dial-around compensation during that period. This bad debt was recorded and recognized on Peoples' balance sheets, and it was reported on Peoples' Form 10-Q filed with the Securities and Exchange Commission. Yet, although this bad debt expense can be attributed only to dial-around calls, the IXCs contend that they should not be required to pay for these expenses.

The IXCs contend that Peoples' data regarding bad debt expense cannot be considered because the data is based on compensation received during the period that the *Payphone Orders* were in effect. Because the *Payphone Orders* were vacated by the Court of Appeals, the IXCs contend, they were not legally obligated to provide any compensation to PSPs during that time period.[10] This fact is, of course, irrelevant. The court's vacatur of the *Payphone Orders* does not mean that the compensation scheme adopted in the *Payphone Orders* did not exist. The fact is that, for several months, the compensation framework adopted in the *Payphone Orders* was in place and had not been stayed by the D.C. Circuit, and that, during that time, Peoples' incurred bad debt expenses as a result of dial-around calls. Other PSPs incurred similar

10 AT&T Opposition at 15, MCI Opposition at 5; Sprint Opposition at 9.

expenses. For example, CCI has been unable to collect 4.34% of the total compensable monthly amount that it was due.[11] In light of this factual basis for calculating bad debt expenses, the IXCs' argument that the Commission should ignore the bad debt expenses incurred by PSPs during the period the *Payphone Orders* were in effect should be rejected.

Moreover, the record demonstrates that PSPs always have experienced costs for "uncollectables" associated with dial-around service. For example, even under the prior $6 per phone per month flat-rate compensation framework, Peoples' expenses for uncollectables exceeded 10% of the revenue it actually collected.[12] As CCI explained, these expenses will only increase under the per call compensation framework because of the need to track calls on a per call basis and the increase in the number of carriers benefiting from dial around service. As a result, failing to consider bad debt expenses in calculating the default rate would deny PSPs the full and fair compensation that Congress envisioned they receive.

The IXCs also make the baseless argument that the Commission should not consider bad debt expenses and administrative expenses necessary to collect them because PSPs are responsible for those expenses.[13] This position is simply untenable. Whether in a particular case bad debt is the responsibility of the PSP or the carrier is irrelevant. These bad expenses are, in fact, incurred by PSPs, including Peoples, as a cost of providing dial-around service, and as

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11 CCI Comments at 5.

12 The American Public Communications Council also submitted data with respect to PSPs bad debt expense. MCI argues that this data should not be considered because it predates compensation for dial-around calls. MCI Opposition at 5. The Commission should reject this position. The failure of IXCs to provide PSPs with fair compensation in the past should not be used to prevent them from providing fair compensation today.

13 AT&T Opposition at 15, Sprint Opposition at 10.

such, appear on their financial statements. Plainly, they are (1) a legitimate cost of doing business and (2) related solely to the provision of dial-around access. As such, these costs should be included in the calculating the compensation that PSPs receive from carriers.[14] It would be nonsensical for the Commission to a establish a dial-around rate that ignores the collectability of revenue in practice, as the IXCs suggest.

Finally, AT&T and Sprint argue that bad debt expense should not be included within the default rate because the Commission's new rules will eliminate disputed claims.[15] While elimination of bad debt expenses would be welcome, the history of disputed claims under the flat rate compensation framework shows that this is unlikely. In the face of tangible evidence of the bad debt expenses that PSPs have incurred, it is pure speculation for the IXCs to argue that such expenses will simply disappear. On the contrary, the Commission should fulfill Congress's mandate that PSPs receive full and fair compensation for each and every call by including bad debt expenses in the default compensation rate.

IV. CONCLUSION

In its petition for reconsideration, Peoples' demonstrated that the costs of coin mechanism and bad debt expenses are costs properly attributable to the provision of dial-around services. The IXCs have offered no valid or persuasive arguments to the contrary, but have instead demonstrated their continued intent to receive the benefits of payphone access for dial-around calls without providing full and fair compensation to PSPs. Accordingly, the

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14 Indeed, it would interesting to determine whether AT&T or Spring has ever failed to include a business expense on its tax return because it determined that those expenses should not have been incurred.

15 AT&T Opposition at 4; Spring Opposition at 10.

Commission should reject the arguments put forth in the oppositions to Peoples' petition for reconsideration, and should adopt Peoples' petition to adjust the default rate to $.328 per call.

Respectfully submitted,
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January 20, 1998

<u>CERTIFICATE OF SERVICE</u>

I Nandan M. Joshi hereby certify that I have this 20th day of January, 1998 caused copies of the foregoing "Reply of Peoples Telephone Company, Inc. to Oppositions to Petition for Reconsideration" to be served by hand on the following:

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